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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 CLAYTON ROUECHE,  
14 Defendant.

NO. CR07-344RSL

DECLARATION OF TODD MAYBROWN  
IN SUPPORT OF MOTION TO STRIKE  
DECLARATION OF DANIEL LeCLERC

15 I, Todd Maybrown, do hereby declare:

16 1. I am an attorney admitted to practice in this court. I am counsel of record for  
17 defendant Clayton Roueche in the above-entitled case.

18 2. On April 28, 2009, Mr. Roueche entered a guilty plea to Counts 1, 3 and 5 of  
19 the Government's Superseding Indictment. *See* Dkt. # 257. Sentencing is currently  
20 scheduled for December 16, 2009 at 1:30 P.M.

21 3. On or about October 27, 2009, the Government submitted several pleadings to  
22 this Court. These pleadings include declarations from several informant witnesses, including  
23 a declaration from a person named Daniel LeClerc.

24 4. Daniel LeClerc is currently in federal prison serving a ten-year sentence on  
25 account of his criminal conduct. Mr. LeClerc has already obtained a departure/variance for

1 his "cooperation" with the case. Nevertheless, in submitting this new declaration, he is  
 2 hoping to obtain an additional reduction of his sentence pursuant to Fed. R. Crim. P. 35(b).

3       5. I have informed the Government and Mr. LeClerc's attorney, Jon Zulauf, of  
 4 my concern that this witness has made false claims in his submission to the Court. In  
 5 particular, I have noted my belief that Mr. LeClerc has lied when he claims that he was  
 6 intimidated, pressured or threatened by Clay Roueche. *See, e.g.*, LeClerc Dec. ¶¶ 10, 18, 37,  
 7 41.<sup>1</sup>

9       6. In fact, it is my belief and understanding that Mr. LeClerc engaged in all of this  
 10 conduct of his own free will. Mr. LeClerc was not a reluctant participant in this activity and  
 11 he was never threatened by Mr. Roueche in any way. To the contrary, Mr. LeClerc was  
 12 always a willing, if not enthusiastic, participant in this activity. It is also my belief that Mr.  
 13 LeClerc has manufactured these claims against Mr. Roueche in an attempt to justify his own  
 14 conduct and to bolster his present claim for a reduction of sentence under Rule 35(b).

16       7. After reviewing the LeClerc declaration, I contacted Jon Zulauf and requested  
 17 an opportunity to meet with his client to discuss these matters. Mr. Zulauf subsequently  
 18 informed me that Mr. LeClerc would not agree to meet with me to discuss any of these  
 19 matters.

20       8. Thereafter, I contacted AUSA Susan Roe to determine if the Government  
 21 might be able to facilitate a meeting between myself and Mr. LeClerc. Ms. Roe indicated that  
 22 she could not assist in arranging a meeting with Mr. LeClerc prior to the sentencing.

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25       26       <sup>1</sup> The Declaration includes a numerical anomaly. Mr. LeClerc signed the final page of the document  
 (number 11) which includes a "Verification" at Paragraph 40. The remainder of the declaration  
 includes a total of 41 numbered paragraphs. I assume this anomaly must be some sort of  
 typographical error or discrepancy in the final document.

1       9.     The Government has indicated that it cannot force Mr. LeClerc to speak with  
 2 defense counsel. While I understand this position, the Government certainly could have  
 3 notified Mr. LeClerc that the decision whether or not to file a Rule 35 motion might be  
 4 impacted by his refusal to cooperate with defense counsel.

5       10.    In light of all of these circumstances, I ask the Court to strike the Declaration  
 6 of Daniel LeClerc. Mr. LeClerc's declaration is highly unreliable – perhaps the most  
 7 unreliable type of hearsay that could be presented to this Court. *See, e.g., Bruton v. United*  
 8 *States*, 391 U.S. 123 (1968); *Whelchel v. Washington*, 232 F.3d 1197, 1207-8 (9<sup>th</sup> Cir. 2000).  
 9 As was explained by the Supreme Court in *Lee v. Illinois*, 476 U.S. 530 (1986):

10       11.    [A] codefendant's confession is presumptively unreliable as to the passages  
 12 detailing the defendant's conduct or culpability because those passages may  
 13 well be the product of the codefendant's desire to shift or spread blame, curry  
 14 favor, avenge himself, or divert attention to another.

15       *Id.* at 545.

16       11.    In fact, this is the type of untested and unreliable hearsay that should not be  
 17 permitted at any sentencing proceeding. *See, e.g., United States v. Petty*, 982 F.2d 1365, 1369  
 18 (9th Cir. 1993), *as amended by* 992 F.2d 1015 (9th Cir. 1993), *cert denied*, 510 U.S. 1040  
 19 (1994); *United States v. Ponce*, 51 F.3d 820, 828 (9<sup>th</sup> Cir. 1995) (“While hearsay statements  
 20 may be considered at sentencing, due process requires that such statements be corroborated by  
 21 extrinsic evidence.”).

22       12.    The LeClerc declaration also includes allegations that he was contacted and  
 23 perhaps threatened by other persons, including an attorney who practices in the State of  
 24 California. *See* LeClerc Dec. ¶ 41. After reviewing this information, I contacted the attorney  
 25 in California in an attempt to verify – or refute – Mr. LeClerc's allegations. That attorney

1 informed me that he would not be able to discuss these issues with me unless it was clear that  
2 Mr. LeClerc had waived his attorney-client privilege as to these same matters. The attorney  
3 also asked for an opportunity to review the witness' declaration and, to facilitate this process,  
4 he has stated that he would agree to abide by any protective order that may be imposed by the  
5 Court.

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8 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
9 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST  
OF MY KNOWLEDGE.

10 DATED this 3<sup>rd</sup> day of December, 2009.

11 Allen, Hansen & Maybrown  
12 Attorneys for Defendant



13  
14 TODD MAYBROWN, WSBA #18557

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record for the Government and the defendants.

/s/ Todd Maybrown

Todd Maybrown, Esq.  
Allen, Hansen & Maybrown, P.S.  
600 University St., #3020  
Seattle, WA 98101  
(206) 447-9681  
[todd@ahmlawyers.com](mailto:todd@ahmlawyers.com)